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REES, BROOME & DIAZ, P. C.

AUG 05 1996

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EX PARTE OR LATE FILED

July 30, 1996

\*ALSO ADMITTED IN THE DISTRICT OF COLUMBIA  
†ALSO ADMITTED IN MARYLAND

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW Room 222  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: In the matter of: Preemption of Local Zoning  
Regulation of Satellite Earth Stations, IB Docket  
No. 95-59, DA91-57, 45-DDS-MISC-93, FCC 96-78,  
Further Notice of Proposed Rule Making

In the matter of: Implementation of Section 207  
of the Telecommunications Act of 1996  
Restrictions on Over the Air Reception Devices:  
Television, Broadcast, and Multi-channel, Multi-  
point Distribution Services: ICS Docket No. 96-  
83, FCC 96-151, Notice of Proposed Rule Making

Dear Mr. Caton:

On behalf of Kingstowne Residential Owners Corporation located in Kingstowne, Virginia, I, along with the president of Kingstowne, Kathleen Snyder, and its community manager, Mary Coscarelli, met with John P. Stern, Senior Legal Advisor and Ken Johnson, Legislative Assistant, to discuss the adverse implications that the above referenced proposed rules would have upon Kingstowne and other community associations. The meeting was arranged and held at the offices of Congressman James Moran.

At this time, Kingstowne wishes to restate its position on these proposed rules as stated in its letter to the FCC of June 5, a copy of which is attached.

Further, I respectfully request the FCC to consider the following modifications to the proposed rule concerning satellite dishes:

No restrictive covenant, encumbrance, homeowners association rule or other non-governmental restriction

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REES, BROOME & DIAZ, P.C.

William F. Caton  
July 30, 1996  
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shall be enforceable to the extent that it substantially prevents a property owner's ability to receive video programming services over a satellite antenna less than one meter in diameter located on the individual property owner's property; provided, however, that a homeowner's association may regulate the location of such satellite antennas to protect the aesthetics of the community or the safety of its residents.

On behalf of Kingstowne, we wish to thank Mr. Stern and Mr. Johnson for hearing and reviewing the concerns of Kingstowne and other community associations with respect to the above referenced rules.

Very truly yours,

REES, BROOME & DIAZ, P.C.

By: Juan R. Cardenas

JRC:spg  
Enclosure

cc: John P. Stern, Senior Legal Advisor  
Ken Johnson, Legislative Assistant  
Kathleen Snyder, President  
Congressman James Moran

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POST MAIL ROOM

AUG 05 1996

Kingstowne Residential Owners Corporation  
6080 Kingstowne Village Parkway  
Alexandria, Virginia 22310

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June 5, 1996

EARTE OR LATE FILED

Ms. Rosalee Chiara  
Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Telecommunications Act of 1996  
Proposed Rule Regarding Non-Governmental  
Restrictions on Receipt by Individuals of Video  
Programming Services  
IB Docket No. 95-59

Dear Ms. Chiara:

This letter is for the purpose of expressing our Association's strong objection to the proposed rule promulgated by the FCC on March 11, 1996, which states:

No restrictive covenant, encumbrance, homeowner association rule, or other non-governmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than 1 meter in diameter.

Our Association has an architectural control procedure which has been established by the protective covenants of record. They are part of every member's chain of title, and they must be disclosed to each contract purchaser as a matter of law. If the contract purchaser does not wish to be bound by the terms and conditions of the architectural covenants, they have the legal right to rescind their contract within a statutorily designated period of time.

We are very concerned about the FCC's proposed rule because it invades and impairs our freely entered legal arrangements with respect to the use of our properties. The overwhelming majority of owners in our community want architectural controls to be enforced to protect the community's aesthetic environment. In our Association, which consists of attached townhomes and single family homes, a satellite dish of 1 meter in certain locations would be entirely inappropriate from an aesthetic standpoint. We strongly request that the FCC note our following objections:

1. Preemption. We strongly believe it is entirely inappropriate for the FCC to take Congress' general grant of authority in the Telecommunications Act and assume the broadest conceivable application of the statute. Based upon the text of the statute, it is certainly not clear to us that Congress

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Ms. Rosalee Chiara  
June 26, 1996  
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intended to empower the FCC to usurp the power of community associations to enforce architectural controls voluntarily accepted by members of the Association and to apply this law in an ex post facto fashion against existing community associations.

2. Size, Location and Appearance. Aside from the legal question as to whether or not the FCC has the power to impair the obligation of our pre-existing protective covenants, we strongly urge the FCC to acknowledge the difference between private and public property use restrictions. We strongly believe that community associations should be afforded greater latitude to regulate the size, location and appearance of satellite receptors. We believe that it stands to reason that certain types of satellite dishes, without reasonable regulation, will negatively affect the exterior appearance and values of homes in our community. One of the main purposes of our Association is to reasonably regulate architectural changes to the homes in order to protect the exterior appearance and values of the townhomes and single family homes in our community.

3. Common Areas v. Lot Installation. The rules should be amended to expressly clarify that the FCC does not allow a homeowner to install a satellite dish in the common areas of community associations. The common areas, as opposed to the individual lots owned by the members, are owned in common by all of the owners.

4. Exemptions. At the very least, we respectfully suggest that the Secretary should consider a revision of the rule to exempt existing community associations from the application of the new rule. We believe the rule should apply only to new communities that have not yet been created. This would allow the developers of those communities to accommodate these satellite dish structures in the design of the community and to include legal provisions in the protective covenants which are consistent with the FCC's rule.

Thank you for your consideration of these matters.

Very truly yours,

BOARD OF TRUSTEES  
KINGSTOWNE RESIDENTIAL OWNERS  
CORPORATION

cc: The Honorable Charles Robb, U.S. Senate  
The Honorable John Warner, U.S. Senate  
The Honorable James Moran, House of Representatives